

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: KUO, Terry B.J.; YANG, Cheryl C.H.

SERIAL NO.: 10/790,508

ART UNIT: 3762

FILED: March 1, 2004

EXAMINER: Greene, D. D.

TITLE: METHOD AND APPARATUS FOR ANALYZING HEART RATE VARIABILITY

PETITION FOR WITHDRAWAL OF A
HOLDING OF ABANDONMENT UNDER 37 C.F.R. § 1.181(a)
STATEMENT OF FACTS

Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Sir:

In accordance with 37 C.F.R. § 1.137(b), the following is a statement of delay caused by unintentional circumstances.

1. The present application was filed on 1 March 2004 as a non-provisional utility patent application.
2. An Office Action was sent on July 25, 2005, rejecting all pending Claims 1-16. The deadline for response was October 25, 2005.
3. Applicant never received the Office Action of July 25, 2005.
4. Applicant's attorney has searched the file and the docketing records. The file and the docketing records indicate that the Office Action of July 25, 2005 was not received.
5. A copy of the "Inventor Card", one of the docketing records of the Applicant's attorney, is attached hereto as Exhibit A. The Inventor Card indicates that the Office Action was never received. There are only entries for the Official Filing Receipt and the Notice of Abandonment.

6. A copy of the docketing book, another one of the docketing records of the Applicant's attorney, is attached hereto as Exhibit B. The docketing book has been provided to cover dates on and around August 25, 2005, September 25, 2005, and October 25, 2005. These are the relevant dates because the response to the Office Action would have been docketed for a response on these dates. The docketing book shows that the Office Action was not docketed for a response, indicating that Applicant's attorney never received the Office Action.
7. The Application was constructively abandoned as of 25 January 2006.
8. A Notice of Abandonment was sent on September 15, 2006.
9. The present petition is less than three months after the date the U.S. Patent and Trademark Office sent the Notice of Abandonment on September 15, 2006.
10. The present petition is less than one year after the date of actual abandonment by the U.S. Patent and Trademark Office on January 25, 2006.
11. A Petition under 37 C.F.R. § 1.137(b) for Unintentional Abandonment has been concurrently filed with the present petition for withdrawal of the holding of abandonment.
12. Applicant now files the present Petition to Withdraw the holding of abandonment because Applicant contends that the present application is not in fact abandoned. A timely response was not filed because the Office Action of July 25, 2005 was never received.

Applicant petitions for withdrawal of the holding of abandonment because the application is not in fact abandoned. Applicant never received the Office Action of July 25, 2005, and Applicant was not able to timely file a responsive amendment. Applicant first learned of the abandonment on September 15, 2006 and promptly prepared the reply and multiple petitions to revive the application or to withdraw the holding of abandonment.

Applicant respectfully contends that the holding of abandonment be withdrawn. The U.S. Patent and Trademark Office has now received the required response, and the Office Action was never received by mail by the Applicant.

Applicant petitions for withdrawal of the holding of abandonment based upon the evidence of the timely filed response. Pursuant to 37 C.F.R. § 1.181(a), no government fee is included.

Furthermore, if the present Petition under 37 C.F.R. § 1.181(a) is granted, Applicant respectfully requests a refund of the petition fee under 37 C.F.R. § 1.26 for the petition for revival based upon unintentional delay, concurrently pending before the Office of Petitions. Applicant has included a proper response, comprising transmittal of an amendment, concurrent with the present filing of the Petition. Applicant files the required reply to secure withdrawal of abandonment of the patent application for consideration on the merits and eventual issuance of allowable subject matter by the U.S. Patent and Trademark Office. No new matter has been added by the present amendment.

The present Petition for Revival is less than one year of the actual abandonment. The present Petition for Revival is less than three months after receiving Notice of Abandonment.

Any additional fees for the petition to revive or any overpayment with regard to this petition and response to the Office Action may be credited or debited to Deposit Account 08-0879.

Respectfully submitted,

<u>November 15, 2006</u>	<u>/Andrew W. Chu/</u>
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CERTIFICATE OF MAILING UNDER 37 CFR 1.8(a)

Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Sir:

I hereby certify that the attached correspondence comprising:

PETITION FOR WITHDRAWAL OF A
HOLDING OF ABANDONMENT UNDER 37 C.F.R. § 1.181(a)

is being deposited by electronic filing on November 1, 2006.

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Respectfully submitted,

November 15, 2006	/Andrew W. Chu/
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